

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4977 of 1996

to

SPECIAL CIVIL APPLICATION No 4979 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SUSHILABEN I DAVE

Versus

DISTRICT PANCHAYAT BHAVNAGAR

Appearance:

MR JF SHAH for Petitioner

MR SP HASURKAR for Respondent No. 1, 3, 4 and 5

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/1999

ORAL JUDGEMENT

1. As in all these three special civil applications, the petitioners are the retired Primary Teachers of the District Panchayat, Bhavnagar, and common questions of

facts and law have arisen for consideration of this Court, the same are taken up for hearing together and are being disposed of by this common judgment.

2. In all these matters, reply to the special civil applications have been filed by the respondents.

3. The petitioners in these petitions are praying for the direction to the respondent No.2 to grant them the benefit of third revised scale of pay of Rs.2000-3500 as on 1-6-1987 as per clause 15 of the Government Resolution annexure B dated 5-7-1991 and to release to the petitioners the amount of difference of salary that may be due accordingly from 1-6-1987 till 31-10-1991 together with interest. Further prayer has been made for revising of all other retirementary benefits keeping in view the revision of their pay.

4. The facts taken from special civil application No.4978 of 1996, in brief, are that the petitioner entered in the services as Primary Teacher on 8-9-1958 and continued to work as such till 31-10-1991 when she retired on attaining the age of superannuation. She passed the qualifying examination (P.T.C.) in year 1958. She was granted Senior time scale of Rs.400-600 (pre-revised) w.e.f. 1-7-1981 on completion of 17 years of her services. The Government of Gujarat vide resolution dated 5-7-1991 introduced a scheme of grant of higher grade scale on completion of 9, 18 and 27 years of services. This scheme was given effect from 1-6-1987. The petitioner claims that she is entitled for the benefits of the said scheme. Under the scheme aforesaid, the benefits of 3rd higher grade scale of Rs.2000-3500 was granted to the petitioner vide order dated 23-12-1994. However, consequential benefits of arrears of fixation of the salary as well as revised retiral benefits have not been given to the petitioner so far. A legal notice was given by the petitioner to the respondents but reply to that notice has not been given. Hence, this special civil application before this Court.

5. In reply to the special civil application, only defence has been taken that the petitioners are not entitled for the benefits of the Government Resolution dated 5-7-1991 as they have not exercised the option for these benefits.

6. Learned counsel for the petitioners raised manifold contentions on the merits of the matter but as I am deciding these petitions on altogether different ground, all these contentions are not required to be

noticed and dealt with.

7. Even if it is taken that option has to be exercised by the petitioners for the benefit of the resolution aforesaid whether it is a case where on this ground the petitioners should be denied of the benefit of the Government resolution aforesaid under which higher grade scale benefits were provided.

8. The petitioner in this petition retired on 31-10-1991 i.e. after three months and few days of the Government Resolution dated 5-7-1991. The petitioner in the special civil application No.4979/96 retired from the services on 31-5-1992 i.e. after about ten months of the resolution aforesaid. The petitioner in the special civil application No.4977/96 retired on 31-10-1992. The petitioners were Primary Teachers in the District Panchayat, Bhavnagar. They were placed and serving in rural areas. It is not the case of the respondents that the resolutions of the Government were made available to them by themselves or by any other officer and they have been asked to file option.

9. It is the contention of the counsel for the respondents that these resolutions were published and as such, notice should have been taken by the petitioners themselves and within stipulated period option should have been exercised. On the record of the special civil application, the respondents have not produced by what mode this resolution has been published. Not only this, repeatedly this court asked to the counsel for the respondents but they are unable to give out the mode by which this resolution has been published. Even if it is taken that this resolution has been published either in the Government Gazette or in some newspaper it is too difficult to accept that the petitioners would have received the same. The Government Gazette is even very difficult to get by the people who are residing in urban areas. Ordinarily a teacher may not be subscribing the Government Gazettes. So far as newspapers are concerned, firstly the notice of resolution has to be published in newspaper having wide circulation. Secondly, merely because it has been published in a newspaper it is too difficult to draw an inference that the petitioners might have notice of the same. The resolution of 1991 is a beneficial scheme which has a socio-economic background and as such it has to be taken care of by the State Government, its officers and functionaries, to see that individual options are being invited and the immediate superior officers of the Teachers have been directed to take their options. Merely depending on the publication

of this notification in the Official Gazette or even in some newspaper is very risky and there are much more chance of non-availability of these benefits to the thousands of teachers. These are the matters where individually employee is to be affected and for which they should have been given proper notice and after having notice thereto if they have not exercised the option it is understandable that they may be deprived of these benefits. The respondents are unable to make out a case that the petitioners got the notice of this resolution and still they have not exercised their option. It is too harsh as well as unequitable to deny these benefits to the petitioners in this case. The petitioners are the low paid employees and in ordinary course it is very difficult to accept that they would not have opted for this beneficial scheme if option would have been called from them by the respondents.

10. Taking into consideration the totality of the facts of this case, the denial of benefit of resolution of 1991 to the petitioners on the ground with which the respondents have come up before this court is not only arbitrary but wholly perverse and it cannot be allowed to stand.

11. In the result, these special civil applications succeeds and the same are allowed and the respondents are directed to give the benefit of the resolution of 1991 to all the petitioners subject to all other conditions as provided for entitlement thereof in the resolution itself. The respondents are further directed to undertake and complete the exercise of giving of the benefit of the resolution of 1991 to the petitioners within a period of three months from the date of receipt of writ of this order. This exercise also includes the revision of retirementary benefits and payment of arrears of retiral benefits as well as the arrears of fixation of pay in the revised pay scale. Rule is made absolute in all these special civil applications in the aforesaid terms with no order as to costs.

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